

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 10, 2011

Ref. No.: GLS-5511

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

Consent to Sublease of General Lease No. S-5511, New Cingular Wireless PCS, LLC, Lessee/Sublessor, to SprintCom, Inc., Sublessee, Humuula, North Hilo, Hawaii, Tax Map Key: 3rd/ 3-9-002:15.

APPLICANT:

New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Lessee/Sublessor, to SprintCom, Inc., a Kansas corporation, as Sublessee, subject to that certain Master Sublease Agreement dated July 26, 2004, between Sprint Spectrum L.P., a Delaware limited partnership, or any Affiliate thereof d/b/a Sprint and SBC Wireless, LLC, a Delaware limited liability company, or Bellsouth Mobility LLC, a Georgia limited liability company, or any Affiliate of these entities all thereof d/b/a Cingular Wireless.

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

"Revision to Sublease Rent Participation Policy" adopted by the Board of Land and Natural Resources (Board) on May 26, 2000, agenda item D-24, and as amended by "Resubmittal: Amendment to the Sublease Rent Participation Policy" approved by the Board on January 26, 2001, under agenda item D-8.

LOCATION:

Portion of Government lands situated at Humuula, North Hilo, Hawaii, identified by Tax Map Key: 3rd/ 3-9-02: 15, as shown on the attached map labeled Exhibit A.

AREA:

.221 acres (9,626.76 square feet), more or less.

SUBLEASE AREA:

.000092 acres or 4.0 square feet, with dimensions of 2'x 2'.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES x NO

LEASE CHARACTER OF USE:

Cellular tower site purposes.

SUBLEASE CHARACTER OF USE:

Cellular tower site purposes.

TERM OF LEASE:

30-years, commencing on May 1, 1997 and expiring on April 30, 2027. Last rental reopening occurred on May 1, 2007; next rental reopening is scheduled for May 1, 2017.

TERM OF SUBLEASE:

16 years, commencing upon date of this Board action.

The Site Lease Agreement (SLA)/Sublease provides Sublessee options for cancellation of sublease term, provided written notification to landlord/sublessor is received not less than six months prior to the fifth, tenth, and/or fifteenth year anniversary of the SLA/Sublease.

ANNUAL RENTAL:

\$16,800.00

ANNUAL SUBLEASE RENTAL:

\$23,652.00 (Due in monthly installments of \$1,971.00, with a 3% annual increase.)

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject site was published in the OEQC's Environmental Notice on January 8, 1996 with a finding of no significant impact (FONSI).

SUBLEASE RENT PARTICIPATION POLICY:

The primary purpose of establishing the Board's Sublease Rent Participation was to prevent lessees from speculating and profiting on fluctuating land values while benefiting from a State lease.

On May 26, 2000, agenda item D-24, the Board approved the "Revision to Sublease Rent Participation Policy" (Policy). On January 26, 2001, agenda item D-8, the Board amended the Policy to address the situation in which the lessee is a non-profit making entity and paying less than fair market rent.

In summary, the Policy applies to three types of situations.

- a. If the lessee subleases unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid the State.
- b. If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.
- c. If the lessee subleases improvements not owned by the State, the Board shall not receive any portion of sublease rents from subleasing improved space unless that right and method of calculation are specifically stated in the lease.

The Board stated on the record that the formulae in the Policy generally reflects the intent of the Board regarding the calculation of sublease sandwich profit and shall serve as guidelines in such calculation. The Board also authorized the staff to use their discretion in representing the State's interest in applying these formulae to address the varying subleasing arrangements that may not fit neatly into the formulae.

Therefore, notwithstanding the Board adopting the Sublease Rent Participation Policy, the policy was never meant to be followed blindly with rigid adherence but instead, the Board expected staff to continue to use good land management practices and standards (and common sense) when analyzing a sublease rent proposal and arriving at a reasonable recommendation for the Board to consider that is both fair to both parties and in the best interest of the State.

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed: YES x NO
Registered business name confirmed: YES x NO

Good standing confirmed: YES x NO

SUBLESSEE:

Place of business registration confirmed: YES x NO

Registered business name confirmed: YES x NO

Good standing confirmed: YES x NO

REMARKS:

At its meeting of December 13, 1996, Agenda Item D-7, the Board of Land and Natural Resources approved a Direct Lease to USCOC of Hawaii 3, Inc., also known as USCOC Florida RSA #8, dba United States Cellular Wireless Communications (USCOC), for Cellular Tower Site together with a Non-Exclusive Easement for Access and Utility purposes at Humuula, North Hilo, Hawaii, Tax Map Key: 3rd/ 3-9-02: portion of 07.

In March 2000, USCOC entered into an agreement with AT&T Wireless Services of Hawaii, Inc, for the sale of its telecommunication system on the Island of Hawaii. The sale closed on August 1, 2000 with a merger of AT&T Wireless and Cingular Wireless being finalized on October 26, 2004.

At its meeting of August 27, 2005, Agenda Item D-4, the Land Board consented to the Assignment of General Lease No. S-5511, Florida RSA #8, LLC (successor in interest to USCOC of Florida #7 and USCOC of Hawaii 3, Inc.), Assignor, to New Cingular Wireless PCS, LLC., formerly known as AT&T Wireless Services of Hawaii, as Assignee.

On June 20, 2006, the Chairperson of the Board of Land and Natural Resources approved a Consent to Sublease of General Lease No. S-5511, between New Cingular Wireless PCS, LLC, Sublessor, and T-Mobile West Corporation, Sublessee. T-Mobile co-located its antennae onto the Cingular Ookala tower.

By letter dated April 29, 2010, Rhonda Turner, AT&T Consent Specialist, requested approval on consent to sublease of General Lease No. S-5511, New Cingular Wireless PCS, LLC, Lessee/ Sublessor, to SprintCom, Inc., Sublessee. Sprint plans to co-locate its wireless equipment within the leased premises and on the cellular tower.

On September 13, 2010, the Chairperson of the Board of Land and Natural Resources approved consent to sublease of General Lease No. S-5511, New Cingular Wireless PCS, LLC, Lessee/Sublessor, to SprintCom, Inc. Staff is of the understanding that the subject sublease is for improved property only.

Pursuant to, Condition 68, Co-location, Page 29 of General Lease No. S-5511, Lessee/Sublessor is exercising its right to charge Sublessee its proportionate share of the

Lessee's incurred cost of constructing, installing, and maintaining the antenna facility. As a result, the sublease rental amount exceeds the lease rental amount.

Upon submitting the file to the Office of the Attorney General (AG) for review, for preparation of the consent to sublease document, the AG recommended that the request for consent to sublease be re-submitted for Land Board consideration.

The following is AT&T's annual maintenance costs for the subject tower site:

Estimated Costs	Description	Annual Average
\$200,000	Cost of construction of tower site.	
\$3,000-7,000	Annual inspections	\$ 5,000
\$80,000-170,000	Major tower maintenance/repairs, every 3-4 years, or \$22,800-48,500 (\$35,700) annually.	\$35,700
\$10,000	General repairs (annual)	\$10,000
\$23,856	Electric bill (annual)	\$23,856
	TOTAL:	\$74,556

The cost to construct the cellular tower (\$200,000) was not included in the figures above.

In a similar situation involving another tower site on Oahu (7/22/11, D-6), it was determined that sandwich profits were involved as the proposed sublease rental rate of \$33,153 exceeded the annual lease rent of \$31,400. In that case, the Board approved a 50% participation by the State in the sandwich profits.

In the present situation, AT&T has shown that it has substantial maintenance costs with respect to the tower. At the same time, the sublease to SprintCom, Inc., will not increase those maintenance expenses. Accordingly, after much contemplation, Land Division has determined that a sandwich profit participation equivalent to 25% of the Sublease rent collected is warranted.

Staff reviewed the file and can report that Lessee is in compliance with all terms and conditions of the lease. Liability and fire insurance are current with an expiration date of 6/01/2012. A Notice of Default for delinquent rent was sent on 6/4/2010, but rent was brought current on 6/29/10. Payment was lost in the mail so a check was reissued. A surety bond for \$33,600 through Safeco Insurance Company is on file. The bond is scheduled to expire on 4/30/2027. The Lessee has never been cited for any illegal or unlawful activity on the State property.

There are no outstanding rental reopening issues.

No agency or community comments were solicited, as there will be no change in disposition or use of the land.

The only access to the leasehold/sublease area is over a narrow paved roadway, which


consists of a portion of the Mauna Loa Road. It is not a public roadway; therefore an easement was required to provide legal accesses to the leasehold parcel. General Lease No. S-5511 includes an access and utility easement, identified as Easements A, B, and C, depicted in metes and bound description under CSF No. 23,135. The Sublease/Site Lease Agreement, includes allowances for the sublessee to utilize the subject roadway/easement to access the sublease area.

RECOMMENDATION: That the Board:

Approve the consent to sublease under General Lease No. S-5511 between New Cingular Wireless PCS, LLC, as Sublessor, and SprintCom, Inc., as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

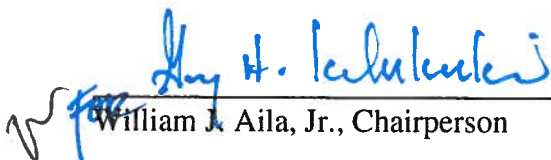
1. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
2. The Lessee/sublessee shall submit construction plans of the Sublessee's improvements to the Land Division for the Chairperson's approval prior to constructing any improvements on the demised premises;
3. Lessee shall be required to pay an additional annual rent equivalent to 25% of the sublease rent collected from SprintCom, Inc.
4. Review and approval by the Department of the Attorney General; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED/DENIED:



William J. Aila, Jr., Chairperson

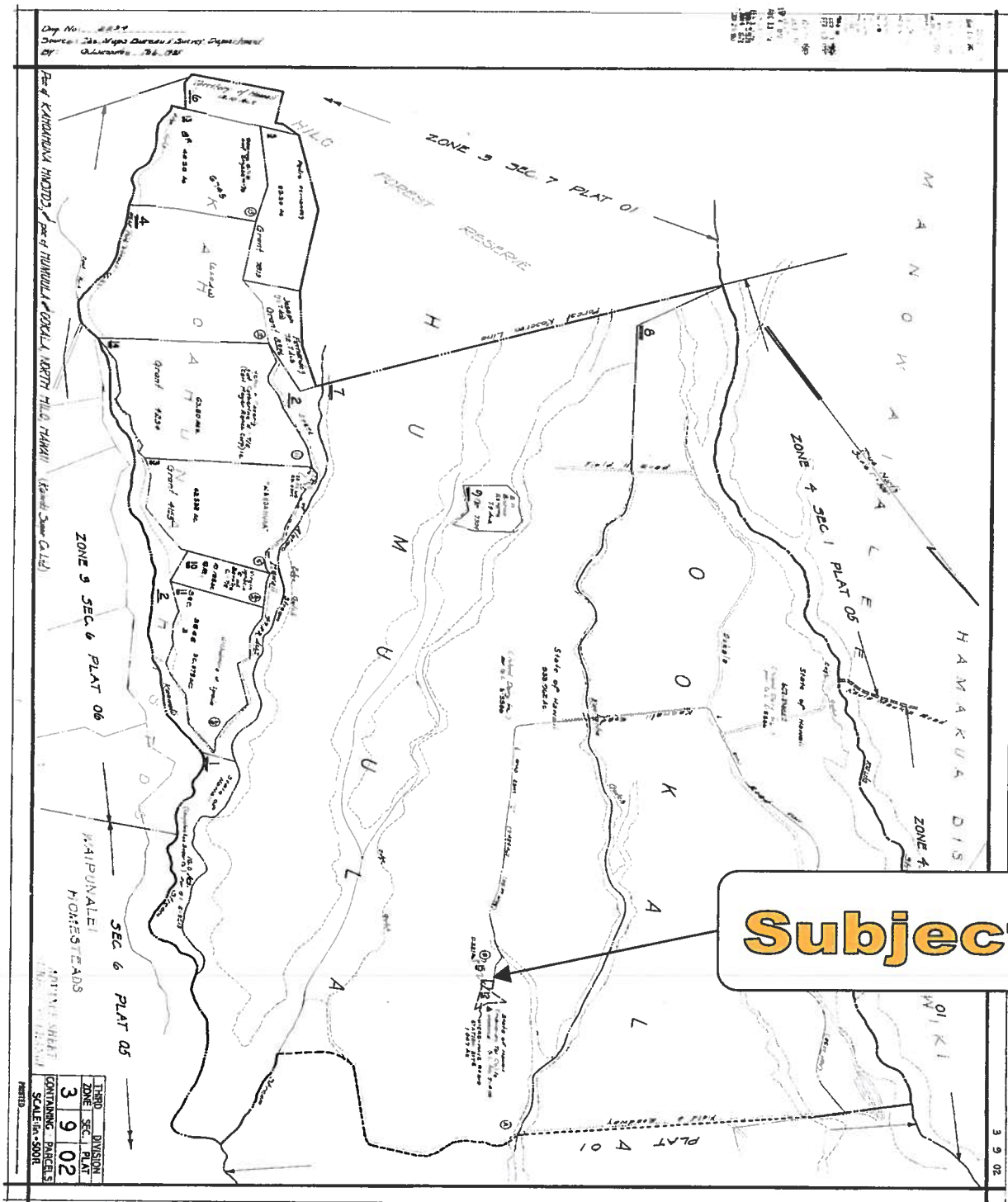


EXHIBIT A

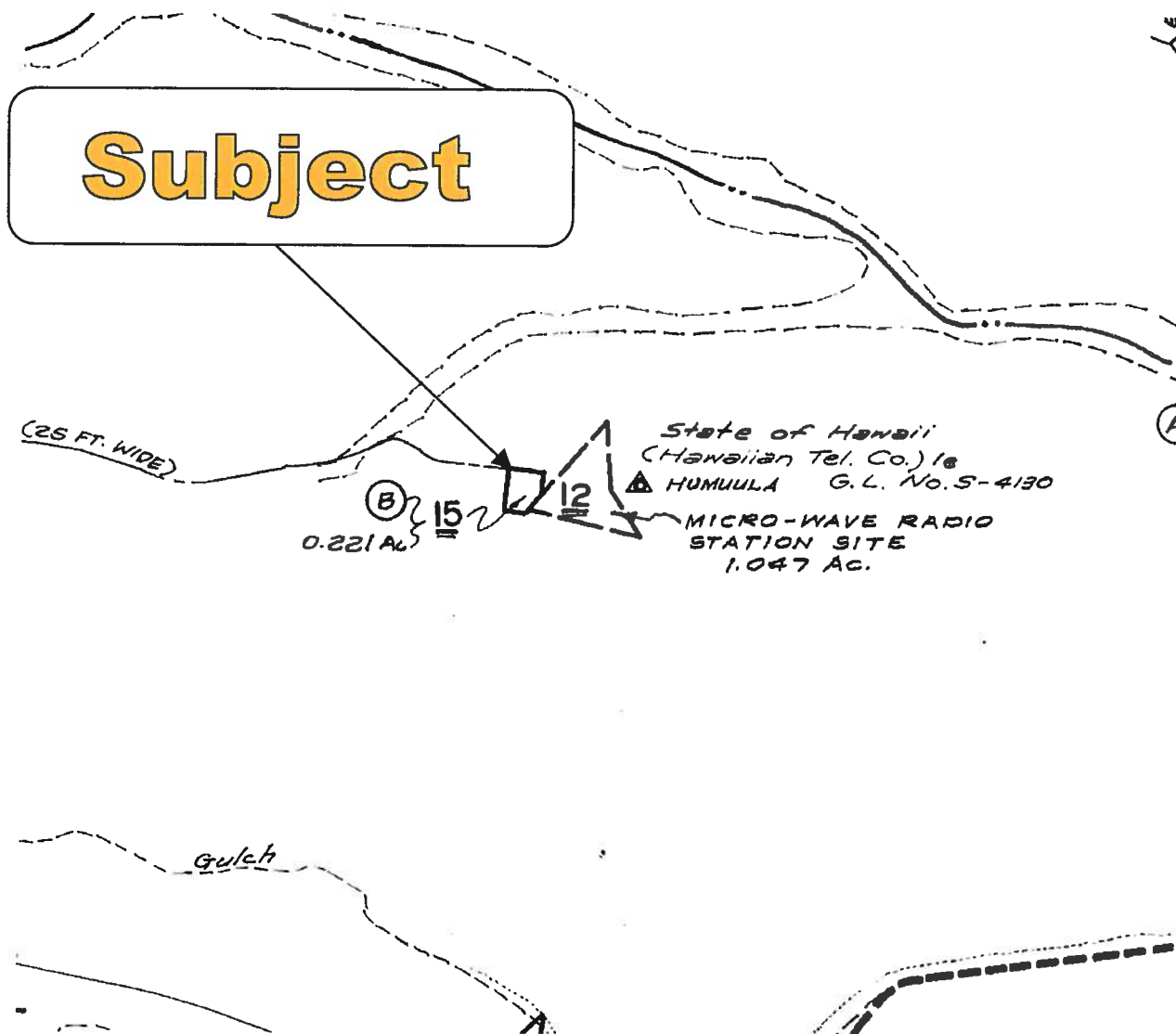


EXHIBIT A